

**DURHAM, NORTH CAROLINA
TUESDAY, SEPTEMBER 7, 2004
7:00 P.M.**

The Durham City Council met in regular session on the above date and time in the Council Chambers at City Hall with the following members present: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Absent: None.

Also present: Interim City Manager Patrick Baker, City Attorney Henry Blinder, City Clerk D. Ann Gray and Deputy City Clerk Linda Bratcher.

Mayor Bell called the meeting to order with a moment of silent meditation and the Pledge of Allegiance led by Council Member Clement.

Mayor Bell read a proclamation proclaiming September 10, 2004 as Carolina All-Stars Girls Basketball Day. A member of the Carolina All-Stars thanked the City Council for their support and presented a plaque to the Mayor for the Parks & Recreation Department.

The Mayor recognized Rev. Melvin Whitley for comments. Rev. Whitley presented members of the Police Department with a plaque for their work with children in PAC 1 Basketball.

Council Member Clement thanked Melvin Whitley for his work, congratulated WTVD on its 50th Anniversary and made comments on his visit to the Hays Town community.

Mayor Bell asked for priority items from the City Manager, City Attorney and City Clerk. Interim City Manager Baker requested that GBA #20 [Motor Vehicle License Tax Ordinance] be referred to the September 9, 2004 Work Session and that Consent #39 [Murdoch Place] be referred back to the administration. Also, he provided Council with a resolution for GBA #12 [Proposed Condemnation of Property on Highway 98 - Ganyard Farm, LLC] and noted Bill Hess from Technology Solutions was present to answer questions regarding the wireless transmission now available in the Council Chambers and Committee Room.

MOTION by Council Member Clement seconded by Council Member Stith to accept the City Manager's priority items was approved at 7:21 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

There were no priority items from the City Attorney and City Clerk.

Mayor Pro Tempore Cole-McFadden directed staff to coordinate a reception for the Carolina All-Stars Girls Basketball Championship Team at City Hall.

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Council Member Stith made comments on one of the members of the Carolina All-Stars Girls Basketball Team who attended his daycare.

Mayor Bell asked if any citizen(s) or council member(s) wanted to pull any items from the Consent Agenda. Consent Agenda Items #13 [Capital Improvements Project Ordinance for Housing Bond Fund], 16 [Barnes Avenue Redevelopment Project], 19 [Long Meadow Park Project], 31 [Anita Keith-Foust] and 33 [Homeplace III - Woodcroft] were pulled.

Council Member Clement noted he would be voting no on Consent Agenda Item #40 [Joe and Jo's Restaurant].

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Stith to approve the Consent Agenda as amended was approved at 7:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

[CONSENT AGENDA]

SUBJECT: APPROVAL OF CITY COUNCIL MINUTES

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Stith to approve City Council minutes for the following meetings; and

July 22, 2004 - Special Meeting
August 2, 2004 - Special Meeting
August 2, 2004 - Regular Meeting
August 5, 2004 - Special Meeting
August 10, 2004 – Special Meeting

To approve City Council's action taken at the July 22, 2004 and August 5, 2004 City Council Work Sessions was approved at 7:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: DURHAM HOUSING AUTHORITY - APPOINTMENT

To appoint a citizen to fill one (1) vacancy on the Durham Housing Authority for a term to expire on September 28, 2009.

Note: City Clerk was directed to re-advertise this vacancy.

SUBJECT: RECREATION ADVISORY COMMITTEE - APPOINTMENTS

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MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Stith to appoint Carolyn M. Davis and to reappoint George R. Dubay and Destry Jordan to fill three (3) vacancies on the Recreation Advisory Committee with terms expiring on August 8, 2007 was approved at 7:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: CONTRACTS

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Stith to authorize the City Manager to execute contracts on the list; and

To authorize the City Manager to make changes to the contracts on the list before execution as long as the changes do not increase the dollar amount and remain consistent with the general intent of the contracts was approved at 7:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

Contractor	Contract Description	Dept	CT Amount
Sheena Patrick	Cheerleader Instructor	P&R	\$1,755.00
Courtney Lea	Computer Instructor	P&R	\$2,340.00
Audrel McCauley	CT Extension Drama Class Instructor	P&R	\$1,225.00
Michael Viana	Judo Instructor	P&R	\$2,100.00
Allan De Cortret	Soccer Official	P&R	\$2,500.00
Austin Johnson	Soccer Official	P&R	\$2,500.00
Ricky Daye	Softball Official	P&R	\$2,500.00
Lisa Wrenn	Volleyball Official	P&R	\$1,800.00
George Hugh	Volleyball Official	P&R	\$2,000.00
Edward Wheeler	Volleyball Official	P&R	\$1,800.00
Joseph Daye Jr	Basketball Official	P&R	\$3,000.00
Dawn Wheeler	Volleyball Official	P&R	\$1,800.00
Charlotte Koran	Senior Exercise	P&R	\$1,300.00
Elvin Fields	CT Extension Judo Instructor	P&R	\$2,250.00
Roy Williams	Baseball Official	P&R	\$2,500.00
Steven Mukungu	Soccer Official	P&R	\$2,500.00
William Dorsey	Baseball Official	P&R	\$2,500.00
Accie Caldwell Jr	Softball Official	P&R	\$2,000.00
Xiomara Boyce	Spanish Instruction	HR	\$8,250.00
Milton Lewis & Associates	Customer Service Workshops	HR	\$2,700.00
Nazeeh Magar	PreSupervisory Skills Workshop	HR	\$4,800.00

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Durham PROUD Program	After School Programs	Housing	\$7,500.00
D L Forbes Youth Foundation	Workshop for at Risk Youth	Housing	\$3,200.00
Vistabution, LLC *	Appraisal of 611 Barnes	Gen Ser	\$500.00

SUBJECT: BIDS – SALE OF SCRAP WATER METERS - SOUTHERN RESOURCES

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Stith to accept the “high” bid from Southern Resources in the amount of \$23,450 for the sale of scrap water meters was approved at 7:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: MAJOR SITE PLAN –KERR DRUG #405 AND BISCUITVILLE (D04-010)

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Stith to approve a major site plan for Kerr Drug #405 and Biscuitville submitted by Commercial Site Design on behalf of Ross-Civello Properties Inc. for a 12,030 square foot pharmacy with a drive-through window and a 3,457 square foot restaurant with a drive through window on a 2.43 acre site zoned NC and F/J-B, and to approve the reduction of the required 50 foot buffer along the southwest property line to 25 feet with a six foot wooden fence, located at 1810 Holloway Street between Gary and Raynor Streets in Southeast Durham, PIN Reference(s) 0831-12-86-3245 etal. Street Atlas 24, Block D-1 was approved at 7:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: LICENSE AGREEMENT WITH HVF MASTER LANDSCAPING MAINTENANCE ASSOCIATION, INC.

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Stith to authorize the City Manager to enter into a License Agreement with HVF Master Landscaping Maintenance Association, Inc. to install an irrigation line, an electric line and landscaping within the City right-of-way along South Roxboro Road was approved at 7:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

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**SUBJECT: APPROVAL OF THE ECONOMIC AND HISTORIC
COMMEMORATION PLAN FOR PARRISH STREET**

To approve the Parrish Street action plan entitled 'Final Report: A New Era on Parrish Street'; and

To authorize the Office of Economic and Employment Development to begin implementation of the strategies recommended within the report.

Note: This item was approved at the 8/19/04 Work Session with a vote of 5/0.

**SUBJECT: GRANT PROJECT ORDINANCE - US DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT ECONOMIC
DEVELOPMENT INITIATIVE PLANNING GRANT – HISTORIC
PARRISH STREET**

To authorize the City Manager to accept the U.S. Department of Housing and Urban Development Economic Development Initiative – Special Projects – FY 2005 Parrish Street Revitalization grant by executing the grant documents; and

To adopt the Grant Project Ordinance for U.S. Department of Housing and Urban Development Economic Development Initiative planning grant funds for Historic Parrish Street in the amount of \$198,820; and

To authorize the City Manager to modify the grant agreement and other documents before execution provided the modifications do not increase the dollar amount and are consistent with the general intent of the of the project grant ordinance approved by the City Council.

**Note: This item was approved at the 8/19/04 Work Session with a vote of 5/0.
Ordinance # 13002**

**SUBJECT: CONTRACT FOR FENCE AT LONG MEADOW POOL - H.B
BARRINGTON, INC.**

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Stith to authorize the City Manager to enter into a contract with H.B Barrington, Inc. in the amount of \$150,285, with a contingency fund in the amount of \$15,029, for a total cost of \$165,314; and

To authorize the City Manager, or her designee, to negotiate and execute change orders for the project provided that the cost does not exceed \$15,029, for a total cost of \$165,314; and

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To authorize the City Manager to modify the agreement before execution provided that modifications do not increase the dollar amount of the agreement and the modifications are consistent with the general intent of the existing version of the agreement was approved at 7:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: UPDATE ON THE CODE ENFORCEMENT TEAM PROGRAM

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Stith to receive a report on the Code Enforcement Team Program was approved at 7:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: SUB-RECIPIENT AGREEMENT FOR CARTHAGE VILLAGE
SUBDIVISION INFRASTRUCTURE WITH DURHAM COUNTY
HABITAT FOR HUMANITY, INC.**

To authorize the expenditure of \$231,983 from CDBG funds; and

To execute a sub-recipient agreement with Durham County Habitat for Humanity to install infrastructure improvements adjacent to the intersection of Holloway Street (HWY 98) and Junction Road in the vicinity Carthage Street; and

To authorize the City Manager to modify the agreement before execution provided that modifications do not increase the dollar amount of the agreement and the modifications are consistent with the general intent of the existing version of the agreement.

Note: This item was moved to the September 9, 2004 Work Session.

**SUBJECT: SELF HELP COMMUNITY DEVELOPMENT CORPORATION –
WALLTOWN PHASE V HOMEOWNERSHIP**

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Stith to appropriate \$250,000 of Housing Bond funds for this project subject to the terms and conditions in the Reservation of Funds Agreement; and

To execute a Reservation of Funds Agreement with Self Help Community Development Corporation, funded from 1996 Housing Bond funds, by which the City agrees to make available to Self Help CDC's home buyers up to \$250,000 for permanent second mortgage financing through the City's First Time Homebuyer Program; and

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To execute a Grant Agreement with Self Help Community Development Corporation in an amount not to exceed \$48,000 funded from FY 03-04 HOME Funds; and

To authorize the City Manager to modify the agreement before execution provided that modifications do not increase the dollar amount of the agreement and the modifications are consistent with the general intent of the existing version of the agreement; and

To find and determine that mortgage loans for this homeownership project are not otherwise available, wholly or in part, from public or private lenders, upon equivalent or reasonably equivalent terms and conditions was approved at 7:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: TRIANGLE YOUTH LIFE FOUNDATION – CONTRACT AMENDMENT

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Stith to authorize the City Manager to extend the term of the sub-recipient agreements with Triangle Youth Life Foundation to support the educational enrichment programs designed to fight poverty through educational enrichment, leadership training, and mentoring from June 30, 2004 to October 31, 2004; and

To authorize the City Manager to modify the agreement before execution provided that modifications do not increase the dollar amount of the agreement and the modifications are consistent with the general intent of the existing version of the agreement was approved at 7:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: REPORT OF CITY TAX COLLECTION FOR FISCAL YEAR ENDED JUNE 30, 2004

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Stith to receive a report of City Tax Collection for Fiscal Year Ended June 30, 2004 was approved at 7:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: FEDERAL AVIATION ADMINISTRATION GRANT OFFER

To accept the Federal Aviation Administration Grant Offer of \$6,729,884 to Expand Terminal C Apron; Relocate Taxiway D (Phase 1), FAA AIP Grant Number 3-37-0056-31; and

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To authorize the City Manager to execute the Grant Agreement; and

To authorize the City Attorney to give assurances with respect thereto; and

To authorize the City Manager and City Attorney to make minor changes to the Grant Agreement.

Note: This item was approved at the 8/19/04 Work Session with a vote of 5/0.

SUBJECT: UPDATE ON THE BARNES AVENUE REDEVELOPMENT

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Stith to receive an update on the Barnes Avenue Redevelopment was approved at 7:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: NEW EAST DURHAM - BARBARA PASCHALL

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Stith to receive comments from Barbara Paschall requesting an increase in communication and interaction with the city in helping them maintain the quality of life they have in their neighborhood was approved at 7:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: RICHARD MULLINAX, JR.

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Stith to receive comments from Richard Mullinax, Jr. regarding weedy lots and city maintenance was approved at 7:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: OPPORTUNITY LOAN PROGRAM

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Stith to receive a report on the Opportunity Loan Program was approved at 7:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

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SUBJECT: LOAN PORTFOLIO

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Stith to receive a report on the Loan Portfolio was approved at 7:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: DISPOSITION OF 607 CANAL STREET

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Stith to authorize the City Manager to advise and instruct Attorney Berman to seek relief from the automatic stay for the City and if granted, proceed with further action necessary to recover the debt which includes, but is not limited to proceeding with foreclosure was approved at 7:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: MURDOCH PLACE HOUSING DEVELOPMENT

To authorize the City Manager to terminate further consideration of Flynn Holdings, Inc. and Innovisions, Inc., as a financial partner and re-developer of the Murdoch Place housing project; and

To authorize the City Manager to continue discussions with three (3) other potential partners/developers that have communicated the same goals and objectives as the City, understand the significance of maintaining project as a low income property and who have the capacity, developmental experience and management of properties similar to Murdoch Place; and

To authorize the City Manager to cooperate with BB&T staff and take advantage of their willingness to work with the City and the recommended developer to return the failing project to a more healthier and productive low income housing development.

Note: This item was referred back to the administration.

SUBJECT: JOE AND JO'S RESTAURANT

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Stith to receive and approve a request from Joseph Fitzgibbon to sell beer at the Centerfest on September 17-18, 2004 was approved at 7:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: Council Member Clement. Absent: None.

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[GENERAL BUSINESS AGENDA]

SUBJECT: PROPOSED CONDEMNATION OF PROPERTY FOR TURN LANES ON HIGHWAY 98; GANYARD FARM, LLC

To adopt the Resolution Authorizing Condemnation of Property for the Highway 98 Turn-lane Project; and

To authorize Ganyard Farm, LLC to settle the condemnation action(s) by payment from its funds of whatever additional sum(s) that Ganyard Farm, LLC finds to be satisfactory on terms and conditions acceptable to Ganyard Farm, LLC and the City Manager in consultation with the City Attorney, provided all monies are paid by Ganyard Farm, LLC; and

To authorize the City Manager to execute the Agreement between Ganyard Farm, LLC and the City of Durham on Payment of Eminent Domain Expenses, and to make changes to such Agreement, provided such changes are consistent with the general intent of this agenda memo.

Sandra Harper, of the Real Estate Division, briefed Council on the staff report. She noted during the zoning, site and development plan process, the developer was required to construct two turn lanes in order to accommodate the traffic on Hwy 98 and was required to dedicate some right-of-way across his property as well as some additional right-of-way along some of the other properties that is contiguous to the proposed development and three property owners' properties were being impacted as a result of this requirement [Mohsen S. Bahna and wife, Jeanette T. Bahna, Jesse D. Cash, Jr. and River of Joy Worship Center]. She noted the property owners and the developer have not come to an agreement on the amount of just compensation, commented on her meeting with the property owners in an attempt to come to an agreement of what is being proposed to Council and there is still a gap between what the property owners feel the property is worth and what the first appraisal has indicated the just compensation is and what the developer has initially offered them. She made comments on a request to have a second appraisal completed which will come to September 9, 2004 Work Session.

Council Member Stith asked staff how is fair market value assessed during the eminent domain process.

Sandra Harper, of the Real Estate Division, noted one appraisal is sufficient and the reason the City is having a second appraisal completed is a way to come to a compromise between the property owners and the developer to see if the first and second appraisals are close to the amount of the appraisal.

Faye Cavallchire, representing Jesse Cash property owner, raised a concern with this item on behalf of her dad's yard being taken away, the noise issue from the traffic and the just

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compensation. She noted she will be getting an estimate to find out how much he will be losing if he sells his property.

Mohsen Bahna, property owner, noted the amount of money that has been appraised by the appraisal is very low and unfair. He urged Council to consider the land value, loss of value and compensation for the right to use his land.

Discussion was held on just compensation.

Louis Goetz, representing Ganyard Farm, LLC, noted the City engineers through our process of zoning and site plan approval determined that a turn lane was necessary which required additional right-of-way for the access in and out of his property and the neighbor properties which would be more accessible and safe. He made comments on the independent appraisal, discussions he had with property owners in an attempt to settle before the appraisal came in and made three offers to each of them and they were three times higher than the appraisal. He noted the developer has made every attempt to settle with the property owners.

Sandra Harper, of the Real Estate Division, summarized what the new appraisal will accomplish and the revised resolution.

Mayor Bell made a recommendation that there be two appraisals [one independent chosen by the property owners which meets the City's criteria and one by the City] and then make a decision on the just compensation.

Interim City Manager Baker asked that this item be referred to the Work Session.

MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to refer this item to the September 9, 2004 City Council Work Session was approved at 8:03 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: ORDINANCE TO INCREASE THE MOTOR VEHICLE LICENSE TAX

To adopt an Ordinance to Amend Section 20-180 of the City Code in Order to Increase the Motor Vehicle License Tax from \$5 to \$10, effective October 1, 2004; and

To adopt an Ordinance Amending the 2004-2005 City of Durham Budget Ordinance, the Same Being Ordinance 12961.

Note: This item was referred to the September 9, 2004 Work Session.

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SUBJECT: GENESIS HOME - BANK OF AMERICA, N.A.

MOTION by Council Member Stith seconded by Council Member Catotti to authorize the City Manager to execute a subordination agreement required for refinancing Genesis Home, Inc. first mortgage with Bank of America, N.A. and for the new loan that is not to exceed \$300,000; and

To authorize the City Manager to modify the agreement before execution provided that modifications do not increase the dollar amount of the agreement and the modifications are consistent with the general intent of the existing version of the agreement was approved at 8:03 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: ENGINEERING SERVICES - DUANE K. STEWART & ASSOCIATES, INC.

To authorize the City Manager to pay Duane K. Stewart & Associates, Inc. the amount of \$5,817.50, for a sanitary sewer study for the area at the intersection of Ephesus Church Road and Farrington Road.

Council Member Best expressed concern with this item. He made comments on the water and sewer line issue and noted work was completed without Council action.

Mayor Bell provided background information on this item. He noted the property owners of the Daniel Tract were under the impression that their property would benefit from having water and sewer extended to the school, but found out the design of the water line would not accommodate their property. The Mayor made comments on the ongoing discussions between the City Council, staff, Durham Public Schools, County Commissioners, the Daniel family and developer and the petition for voluntary annexation submitted by the Daniel family. The Mayor noted this item is not for the payment of an extension of water and sewer, but for an independent study done by Duane Stewart in an attempt to bring some type of resolution to this issue.

Council Member Best noted this item should have been brought before the Durham Public Schools and not the City. He asked staff to provide the total amount of contract including DPS' share.

It was indicated that staff will provide the amount at Thursday's Work Session.

MOTION by Council Member Stith seconded by Council Member Clement to authorize the City Manager to pay Duane K. Stewart & Associates, Inc. the amount of \$5,817.50, for a sanitary sewer study for the area at the intersection of Ephesus Church Road and Farrington Road was approved at 8:21 p.m. by the following vote: Ayes: Mayor Bell,

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Mayor Pro Tempore Cole-McFadden and Council Members Catotti and Clement. Noes: Council Members Best, Brown and Stith. Absent: None.

[GENERAL BUSINESS AGENDA – PUBLIC HEARINGS]

**SUBJECT: FY 2003-2004 DRAFT CONSOLIDATED ANNUAL
PERFORMANCE AND EVALUATION REPORT (CAPER)
PUBLIC HEARING**

To receive public comments on the FY 2003-2004 Draft Consolidated Annual Performance and Evaluation Report (CAPER) on September 7, 2004.

Katherine Simmons, of Housing & Community Development, made comments on this item.

Mayor Bell opened the public hearing. There being no one to speak in support for or against this item, the Mayor declared the public hearing closed.

MOTION by Council Member Stith seconded by Council Member Catotti to receive public comments on the FY 2003-2004 Draft Consolidated Annual Performance and Evaluation Report (CAPER) on September 7, 2004 was approved at 8:22 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: REZONING MATTER CASE P04-20 – PEARL KNOLL
SUBDIVISION – HAIRSTON BUILDERS, LLC –922 CLAYTON
ROAD**

To receive public comment on rezoning Case P04-20 (Pearl Knoll Subdivision); and

To adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in rezoning Case P04-20 out of RD and R-20 and placing same in and establishing same as PDR 3.0.

Planning Department Recommendation: Approval

Zoning Committee Recommendation and Vote: Approval – (5-1)

City/County Planning Director Frank Duke briefed Council on the staff report.

Mayor Bell opened the public hearing. There being no one to speak in support for or against this item, the Mayor declared the public hearing closed.

MOTION by Council Member Clement seconded by Council Member Stith to receive public comment on rezoning Case P04-20 (Pearl Knoll Subdivision); and

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To adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in rezoning Case P04-20 out of RD and R-20 and placing same in and establishing same as PDR 3.0 was approved at 8:24 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: REZONING MATTER CASE P04-28 – KRONHAUS TRACT -
DAVID DANIELS CONSTRUCTION – 4427 OLD CHAPEL HILL
ROAD**

To receive public comment on rezoning Case P04-28 (Kronhaus Tract); and

To adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in rezoning Case P04-28 out of R-20 and placing same in and establishing same as PDR 2.5.

Planning Department Recommendation: Approval

Zoning Committee Recommendation and Vote: Approval – (6-0)

City/County Planning Director Frank Duke briefed Council on the staff report. He noted there is a development plan associated with this request and gave a summary of the committed elements.

Mayor Bell opened the public hearing.

Proponent

Mark Ashness, representing the applicant, spoke in support of this rezoning request. He commented on the community meetings held with the adjacent neighborhoods and as a result the applicant has generated committed elements that meet those concerns.

No one spoke in opposition to this rezoning. Mayor Bell declared the public hearing closed.

MOTION by Council Member Clement seconded by Council Member Stith to receive public comment on rezoning Case P04-28 (Kronhaus Tract); and

To adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in rezoning Case P04-28 out of R-20 and placing same in and establishing same as PDR 2.5 was approved at 8:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

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SUBJECT: REZONING MATTER CASE P04-32 – THE PANTRY – CE GROUP, INC. –SOUTHWEST CORNER OF GARRETT ROAD AND HOPE VALLEY ROAD (HWY 751

To receive public comment on rezoning Case P04-32 (The Pantry); and

To adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in rezoning Case P04-32 out of NC, R-10; F/J-B and placing same in and establishing same as NC; F/J-B.

Planning Department Recommendation: Approval
Zoning Committee Recommendation and Vote: Approval – (6-0)

City/County Planning Director Frank Duke briefed Council on the staff report noting there is no development plan associated with this request and the proposal is consistent with the NC54/I-40 Corridor Study.

Mayor Bell opened the public hearing.

Proponent

Mark Ashness, representing the applicant, spoke in support of this rezoning request.

No one spoke in opposition to this rezoning request. Mayor Bell closed the public hearing.

MOTION by Council Member Clement seconded by Council Member Stith to receive public comment on rezoning Case P04-32 (The Pantry); and

To adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in rezoning Case P04-32 out of NC, R-10; F/J-B and placing same in and establishing same as NC; F/J-B was approved at 8:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: REZONING MATTER CASE P03-52 – VALLEY CREEK CENTER – INDRA GROUP, NORTHWEST CORNER OF S. ROXBORO STREET AND MARTIN LUTHER KING, JR. PARKWAY, SOUTH OF ARDMORE DRIVE

To receive public comment on rezoning Case P03-52 (Valley Creek Center); and

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To adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in rezoning Case P03-52 out of SC, RD, PDR 3.44 and placing same in and establishing same as SC(D).

Planning Department Recommendation: Approval

Zoning Committee Recommendation and Vote: Denial - (4-2)

City/County Planning Director Frank Duke briefed Council on the staff report. He noted there is a development plan associated with this project and summarized committed elements highlighted on pages 2 and 3 of staff report. Mr. Duke stated this proposal is consistent with the South Durham Plan, staff is recommending approval and the Zoning Committee recommended denial.

Mayor Bell opened the public hearing.

Proponent

Attorney Kenneth Spaulding, representing the applicant, spoke in support of this rezoning request. He made comments on the use and Council's approval of the amendment to the small area plan. Attorney Spaulding stated the Martin Luther King, Jr. Parkway frontage will remain the same as under the present plan, noted the present zoning does not have a development plan; however, this proposal before Council tonight does attach an appropriate development plan as a part of this rezoning application. He urged Council to support this rezoning request which will allow for a much more attractive development.

No one spoke in opposition to this rezoning request. Mayor Bell declared the public hearing closed.

Relative to page 6 of the TIA, Council Member Catotti noted the following is not highlighted in the list under development plan in the staff report: *The developer will revegetate the median affected by the proposed median break in accordance with a landscape design reviewed and approved by the City of Durham Public Works Department as part of the construction review and approval process. The cost of the landscape design, all landscape plants and materials, installation, and warranty maintenance are the financial responsibility of the developer.*

City/County Planning Director Frank Duke replied the note is shown as a committed element on the development plan itself.

Council Member Catotti made comments on the following committed element: Buffer adjacent to R-20 developed land will be enhanced with 6 ft. tall evergreen similar to Leyland Cypress planted 8 ft. on center. Buffer reductions may be considered at the time of site plan approval.

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City/County Planning Director Frank Duke noted the commitment to Leyland Cypress is in addition to all of the other buffer requirements. It would be a standard buffer enhanced by the addition of the Leyland Cypress.

Council Member Catotti made comments in support of plantings being close (6 or 8 ft) to provide an additional noise barrier.

Planning Director Frank Duke noted Leyland Cypress block a great deal of light and if you plant them too closely and too tightly they would have an adverse impact on the vegetation on the remaining of the buffer and the other required vegetation. He noted staff could look at modifying the committed element to indicate as closely as possible in order to maintain the integrity of the buffer.

Lee Ventura, the applicant, requested that the following language be added as a committed element: Will be integrated with required plantings so that the objective would be to create a noise buffer.

Planning Director Frank Duke noted the applicant has committed to look at planting them closer, if it is possible, in order to maintain the integrity and survivability.

Council held discussion on buffer reduction.

Mayor Pro Tempore Cole-McFadden asked the applicant if he has been in contact with Mr. Lofton to address his concern regarding the noise issue.

Attorney Spaulding, representing the applicant, noted he met with Mr. Lofton after the meeting and explained what the applicant is trying to accomplish. He noted the applicant will work with and keep in touch with Mr. Lofton.

MOTION by Council Member Clement seconded by Council Member Best to receive public comment on rezoning Case P03-52 (Valley Creek Center); and

To adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in rezoning Case P03-52 out of SC, RD, PDR 3.44 and placing same in and establishing same as SC(D) was approved at 8:43 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: INSTALLATION OF SPEED HUMPS ON N. MAPLE STREET,
DUNBAR STREET AND CANAL STREET**

To receive public comment on the installation of speed humps on N. Maple Street Dunbar Street and Canal Street; and

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To approve the installation of speed humps on N. Maple Street, Dunbar Street, and Canal Street and placement of these streets on the list of streets to receive speed humps pending the availability of funding.

Public Works Director Katie Kalb made comments on this item.

Mayor Bell opened the public hearing.

Amelia Thorpe, of 608 Dunbar Street, urged Council to approve speed humps for Dunbar Street because it is dangerous and they are needed.

Antonio Harris, of 213 N. Maple Street, spoke in favor of this item. He noted it is extremely dangerous and uncomfortable walking to and from the bus stop.

Robin Morrison, of 205 N. Maple Street, expressed concern with illegal activities in the area and spoke in support of having speed humps which will slow down the traffic because of children and the elderly in the neighborhood.

Jacqueline Tilley, of 209 N. Maple Street, spoke in support of speed humps being placed in the area for the children and elderly citizens.

JoAnne Elliott, of 203 N. Maple Street, spoke in favor of speed humps for the safety of her mother who walks in the street because of high bushes.

Mayor Bell declared the public hearing closed.

Mayor Bell asked staff if there is money to do these speed humps.

Public Works Director Katie Kalb replied yes.

The Mayor also asked staff to look at the bushes on Maple Street that block ones view and the illegal activities in the area.

Council Member Clement made comments on the criminal activities.

MOTION by Council Member Catotti seconded by Council Member Stith to receive public comment on the installation of speed humps on N. Maple Street, Dunbar Street and Canal Street; and

To approve the installation of speed humps on N. Maple Street, Dunbar Street, and Canal Street and placement of these streets on the list of streets to receive speed humps pending the availability of funding was approved at 8:55 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

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[ITEMS PULLED FROM CONSENT AGENDA]

**SUBJECT: SALES AND MARKETING FIRM – BARNES AVENUE
REDEVELOPMENT PROJECT**

To execute a contract with Century 21 Four Star Realty to provide marketing activities for the Barnes Avenue Redevelopment project in an amount not to exceed \$25,000 from 1996 Housing Bond funds designated for the Barnes Avenue Initiative; and

To execute a contract with Century 21 Four Star Realty to market and sell forty seven units in the Barnes Avenue Redevelopment project; and

To modify the contract before execution provided the modifications do not increase the dollar amount of the contract and are consistent with the general intent of the version of the contract approved by City Council.

Bob Novak, of 5500-89A Fortunes Ridge, made comments on documentation provided to City Attorney's Office today concerning this item. He noted the charges by Century 21 will be over \$300,000 and his proposal comes under 200,000 which is a flat fee process. He urged Council to delay this item based on the \$100,000 savings.

City Attorney Blinder noted there is no legal issue and it's a matter of policy if Council/administration wants to make a different recommendation based on information given by Mr. Novak.

Interim City Manager Baker noted he has not seen documents mentioned by Mr. Novak, will review them and give a report at Thursday's Work Session. He asked Mr. Niles if there was a problem with holding this item to Thursday.

Tim Niles, of Century 21 Four Star Realty, replied no. He noted he has gone through the RFP process and there were four firms who responded. Mr. Novak has reviewed the four proposals and in return has submitted a proposal that defeats the purpose of the RFP process.

Mayor Bell made comments in support of holding this item to Thursday to allow the City Manager to look at the issue.

Council Best asked staff to outline why the other three firms were not chosen.

Richard Valzonis, of Housing and Community Development, noted Century 21 Four Star Realty was the best bid staff received and explained proposals submitted by the other firms highlighting the fees and RFP process.

Tim Niles, of Century 21 Four Star Realty, made comments on the RFP process. He noted Century 21 was properly chosen, submitted the proper information and should have the contract.

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MOTION by Council Member Clement seconded by Council Member Stith to refer this item to the September 9, 2004 Work Session was approved at 9:06 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: AMEND GENERAL CAPITAL IMPROVEMENTS PROJECT
ORDINANCE FOR HOUSING BOND FUND**

To adopt an ordinance amending General Capital Improvement Project Ordinance, Fiscal Year 2004-05, as amended, the same being ordinance #12972 for the purpose of recognizing \$2,500,000 of Program Income from the Housing Bond Fund increasing the appropriation from \$48,000,750 to a total appropriation of \$50,500,750.

Council Member Stith expressed concern with this item and asked staff questions relative to the \$2.5 million program income.

MOTION by Council Member Clement seconded by Council Member Best to refer this item to the September 9, 2004 Work Session was approved at 9:14 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: ANITA KEITH-FOUST

To receive comments from Anita Keith-Foust on neighborhood concerns.

Anita Keith-Foust, of 323 W. Trinity Avenue, requested that the sale of the school be rescinded because the tax value was over \$1 million but was sold for \$205,000.

Council Member Stith expressed concern regarding the disparity in the appraisal and tax value.

Mayor Bell outlined what happened noting he was informed that the County Tax Office did a windshield appraisal never going inside of the building, set the value and the property did not generate any taxes.

General Services Manager Mark Greenspan made comments on the independent appraisal and noted the County stated the assessed value was based upon an estimate of construction cost.

Mayor Bell noted the City Attorney has advised Council that they cannot undo the sale.

Note: No action was taken on this item.

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SUBJECT: HOMEPLACE III - WOODCROFT

To receive comments from Robert Novak regarding private streets.

Bob Novak informed Council that he was replacing the information provided at the Work Session. He urged the City to take over the streets which will include the 17 items listed in the revised handout provided.

Mayor Bell asked Mr. Novak to schedule a meeting with the Interim City Manager concerning his request.

Note: No action was taken on this item.

SUBJECT: CAPITAL PROJECT ORDINANCE AMENDMENT TO INCREASE THE BUDGET FOR THE LONG MEADOW PARK PROJECT

MOTION by Council Member Stith seconded by Council Member Clement to find that the Long Meadow Park renovation project is at least 25% necessitated by new construction and that up to 25% of the capital costs of that project may be paid by impact fees collected within the same service zone and collected for the same purpose; and

To adopt an ordinance amending the Capital Project Ordinance, Fiscal Year 2004-05, as amended, the same being ordinance #12972, for the purpose of increasing the budget for the construction of park facilities at Long Meadow Park by allocating \$241,000 from the Impact Fees in Impact Fee Zone 2 to the project; and

To combine the three Long Meadow accounts (pool, playground and park) into one project was approved at 9:32 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

Ordinance # 13003

[GENENRAL BUSINESS AGENDA]

SUBJECT: DURHAM OPEN SPACE & TRAILS COMMISSION - APPOINTMENTS

MOTION by Council Member Clement seconded by Council Member Catotti to appoint Joe Goebel to fill one (1) vacancy on the Durham Open Space & Trails Commission to represent At-Large with a term to expire June 30, 2005 was approved at 9:33 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

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To appoint a citizen to fill one (1) vacancy on the Durham Open Space & Trails Commission to represent Ward 2 with a term to expire on June 30, 2005. (At the August 19, 2004 Work Session, Ms. Searl-Bouton received three (3) votes).

By ballot, the City Council appointed Christine Searl-Bouton to the Durham Open Space & Trails Commission with a term to expire June 30, 2005 with seven votes.

There being no further business to come before the City Council, the meeting was adjourned at 9:33 p.m.

Linda E. Bratcher
Deputy City Clerk

D. Ann Gray, CMC
City Clerk